

REMARKS

Claims 1-34 are pending in the present application.

The rejection of Claims 3-4 and dependent claims 5-33 and 34 under 35 U.S.C. §112, first paragraph (enablement), is obviated by amendment.

The Examiner has also taken the position that the recited stringency in Claims 3 and 4 is not stringent enough. The Examiner alleges that the stringency recited therein would effectively allow for a scope of homology of 80% to 90%.

With respect to the Examiner's criticisms with respect to the scope of homologs defined by percent homology (i.e., allegedly 80% to 90%) and hybridization conditions, Applicants submit the following. First, with respect to the *stringent* conditions, Applicants submit that such stringent conditions are sufficient to enable the skilled artisan practice the claimed invention without undue experimentation. Further, it should be noted that the Examiner has failed to provide any reason to doubt the objective truth of enablement of claims containing these stringency conditions.

To this end, the Examiner is reminded that MPEP §2164.04 states:

A specification disclosure which contains a teaching of the manner and process of making and using an invention in terms which correspond in scope to those used in describing and defining the subject matter sought to be patented must be taken as being in compliance with the enablement requirement of 35 U.S.C. 112, first paragraph, unless there is a reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support.

Accordingly, Applicants submit that the Examiner has failed to make out a proper case with respect to the claimed invention based on stringency conditions.

Nonetheless, to expedite examination of the present application, Claims 3 and 4 have been amended based on page 21, lines 12-21 of the specification to define the stringency conditions as 60°C and 0.1xSSC and 0.1% SDS.

In view of the foregoing amendment, Applicants submit that the claimed invention is in full compliance with the enablement requirement of 35 U.S.C. §112, first paragraph.

Applicants request withdrawal of these grounds of rejection.

The rejection of Claims 5-6 and dependent Claims 9-10, 13-14, 17-18, 21-22, 25-26, 29-30, and 33-34 under 35 U.S.C. §112, second paragraph, is obviated by amendment.

Applicants submit that the claims have been amended to address the Examiner's specific criticisms. Specifically, Claims 5 and 6 have been amended to insert the term "said" prior to the phrase "stringent conditions" to clearly indicate that the stringent conditions are the same as those recited in parts (d) and (f) of Claims 3 and 4, from which Claims 5 and 6 depend respectively.

In the Office Action, the Examiner alleges "if these are the same hybridization conditions as those in the base claims 3 and 4 phrase "under stringent conditions" is redundant." Applicants disagree and note that Claims 5 and 6 are specifically directed to parts (d) and (f) from Claims 3 and 4, respectively, as opposed to parts (c) and (e) of these claims. The recitation of "under said stringent conditions" should be maintained to ensure proper antecedent basis and is not confusing.

Applicants request withdrawal of this ground of rejection.

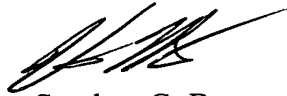
Finally, the Examiner indicates that Applicants are not entitled to the date of the priority, because the certified English translations of PCT/JP02/07635, JP 2001-226568, and JP 2001-310547 have not been filed. Therefore, to perfect their claim to priority, Applicants

**submit herewith** a certified English translation of PCT/JP02/07635, JP 2001-226568, and JP 2001-310547.

Applicants submit that the present application is now in condition for allowance.  
Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Stephen G. Baxter, Ph.D.  
Attorney of Record  
Registration No. 32,884

Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number

**22850**

(703) 413-3000  
Fax #: (703) 413-2220